

§ 404.1539 How we consider whether treatment is available.

Our determination about whether treatment is available to you for your drug addiction or your alcoholism will depend upon—

- (a) The capacity of an approved institution or facility to admit you for appropriate treatment;
- (b) The location of the approved institution or facility, or the place where treatment, services or resources could be provided to you;
- (c) The availability and cost of transportation for you to the place of treatment;
- (d) Your general health, including your ability to travel and capacity to understand and follow the prescribed treatment;
- (e) Your particular condition and circumstances; and
- (f) The treatment that is prescribed for your drug addiction or alcoholism.

[60 FR 8148, Feb. 10, 1995]

§ 404.1540 Evaluating compliance with the treatment requirements.

(a) *General.* Generally, we will consider information from the treatment institution or facility to evaluate your compliance with your treatment plan. The treatment institution or facility will:

- (1) Monitor your attendance at and participation in treatment sessions;
- (2) Provide reports of the results of any clinical testing (such as, hematological or urinalysis studies for individuals with drug addiction and hematological studies and breath analysis for individuals with alcoholism) when such tests are likely to yield important information;
- (3) Provide observational reports from the treatment professionals familiar with your individual case (subject to verification and Federal confidentiality requirements); or
- (4) Provide their assessment or views on your noncompliance with treatment requirements.

(b) *Measuring progress.* Generally, we will consider information from the treatment institution or facility to evaluate your progress in completing your treatment plan. Examples of milestones for measuring your progress with the treatment which has been pre-

scribed for your drug addiction or alcoholism may include (but are not limited to)—

- (1) Abstinence from drug or alcohol use (initial progress may include significant reduction in use);
- (2) Consistent attendance at and participation in treatment sessions;
- (3) Improved social functioning and levels of gainful activity;
- (4) Participation in vocational rehabilitation activities; or
- (5) Avoidance of criminal activity.

[60 FR 8148, Feb. 10, 1995]

§ 404.1541 Establishment and use of referral and monitoring agencies.

We will contract with one or more agencies in each of the States, Puerto Rico and the District of Columbia to provide services to individuals whose disabilities are based on a determination that drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 404.1535) and to submit information to us which we will use to make decisions about these individuals' benefits. These agencies will be known as referral and monitoring agencies. Their duties and responsibilities include (but are not limited to)—

- (a) Identifying appropriate treatment placements for individuals we refer to them;
- (b) Referring these individuals for treatment;
- (c) Monitoring the compliance and progress with the appropriate treatment of these individuals; and
- (d) Promptly reporting to us any individual's failure to comply with treatment requirements as well as failure to achieve progress through the treatment.

[60 FR 8148, Feb. 10, 1995]

RESIDUAL FUNCTIONAL CAPACITY

§ 404.1545 Your residual functional capacity.

(a) *General—*(1) *Residual functional capacity assessment.* Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is the most you can still do despite your limitations. We

will assess your residual functional capacity based on all the relevant evidence in your case record. (See §§ 404.1512(d) through (e).)

(2) *If you have more than one impairment.* We will consider all of your medically determinable impairments of which we are aware, including your medically determinable impairments that are not “severe,” as explained in §§ 404.1520(c), 404.1521, and 404.1523, when we assess your residual functional capacity. (See paragraph (e) of this section.)

(3) *Evidence we use to assess your residual functional capacity.* We will assess your residual functional capacity based on all of the relevant medical and other evidence. In general, you are responsible for providing the evidence we will use to make a finding about your residual functional capacity. (See § 404.1512(c).) However, before we make a determination that you are not disabled, we are responsible for developing your complete medical history, including arranging for a consultative examination(s) if necessary, and making every reasonable effort to help you get medical reports from your own medical sources. (See §§ 404.1512(d) through (f).) We will consider any statements about what you can still do that have been provided by medical sources, whether or not they are based on formal medical examinations. (See § 404.1513.) We will also consider descriptions and observations of your limitations from your impairment(s), including limitations that result from your symptoms, such as pain, provided by you, your family, neighbors, friends, or other persons. (See paragraph (e) of this section and § 404.1529.)

(4) *What we will consider in assessing residual functional capacity.* When we assess your residual functional capacity, we will consider your ability to meet the physical, mental, sensory, and other requirements of work, as described in paragraphs (b), (c), and (d) of this section.

(5) *How we will use our residual functional capacity assessment.* (i) We will first use our residual functional capacity assessment at step four of the sequential evaluation process to decide if you can do your past relevant work. (See §§ 404.1520(f) and 404.1560(b).)

(ii) If we find that you cannot do your past relevant work (or you do not have any past relevant work), we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can make an adjustment to any other work that exists in the national economy. (See §§ 404.1520(g) and 404.1566.) At this step, we will not use our assessment of your residual functional capacity alone to decide if you are disabled. We will use the guidelines in §§ 404.1560 through 404.1569a, and consider our residual functional capacity assessment together with the information about your vocational background to make our disability determination or decision. For our rules on residual functional capacity assessment in deciding whether your disability continues or ends, see § 404.1594.

(b) *Physical abilities.* When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work.

(c) *Mental abilities.* When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, co-workers, and work pressures in a work setting, may reduce your ability to do past work and other work.

(d) *Other abilities affected by impairment(s).* Some medically determinable

impairment(s), such as skin impairment(s), epilepsy, impairment(s) of vision, hearing or other senses, and impairment(s) which impose environmental restrictions, may cause limitations and restrictions which affect other work-related abilities. If you have this type of impairment(s), we consider any resulting limitations and restrictions which may reduce your ability to do past work and other work in deciding your residual functional capacity.

(e) *Total limiting effects.* When you have a severe impairment(s), but your symptoms, signs, and laboratory findings do not meet or equal those of a listed impairment in appendix 1 of this subpart, we will consider the limiting effects of all your impairment(s), even those that are not severe, in determining your residual functional capacity. Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone; e.g., someone with a low back disorder may be fully capable of the physical demands consistent with those of sustained medium work activity, but another person with the same disorder, because of pain, may not be capable of more than the physical demands consistent with those of light work activity on a sustained basis. In assessing the total limiting effects of your impairment(s) and any related symptoms, we will consider all of the medical and nonmedical evidence, including the information described in § 404.1529(c).

[56 FR 57943, Nov. 14, 1991, as amended at 68 FR 51162, Aug. 26, 2003; 77 FR 10656, Feb. 23, 2012]

§ 404.1546 Responsibility for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency medical or psychological consultant and a State agency disability examiner make the disability determination as provided in § 404.1615(c)(1) of this part, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity. When a State agency disability exam-

iner makes a disability determination alone as provided in § 404.1615(c)(3), the disability examiner is responsible for assessing your residual functional capacity.

(b) *Responsibility for assessing residual functional capacity in the disability hearings process.* If your case involves a disability hearing under § 404.914, a disability hearing officer is responsible for assessing your residual functional capacity. However, if the disability hearing officer's reconsidered determination is changed under § 404.918, the Associate Commissioner for the Office of Disability Determinations or his or her delegate is responsible for assessing your residual functional capacity.

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* If your case is at the administrative law judge hearing level or at the Appeals Council review level, the administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible for assessing your residual functional capacity.

[68 FR 51162, Aug. 26, 2003, as amended at 71 FR 16445, Mar. 31, 2006; 75 FR 62681, Oct. 13, 2010; 76 FR 24807, May 3, 2011]

VOCATIONAL CONSIDERATIONS

§ 404.1560 When we will consider your vocational background.

(a) *General.* If you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child's insurance benefits based on disability which began before age 22, or widow's or widower's benefits based on disability for months after December 1990, and we cannot decide whether you are disabled at one of the first three steps of the sequential evaluation process (see § 404.1520), we will consider your residual functional capacity together with your vocational background, as discussed in paragraphs (b) and (c) of this section.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work.